



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/159573

PRELIMINARY RECITALS

Pursuant to a petition filed August 01, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on September 16, 2014, at Kenosha, Wisconsin.

The issue for determination is whether the Petitioner's appeal is timely and, if so, whether the agency properly denied speech/language therapy for the Petitioner.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Theresa Walske

Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Kenosha County.

2. On February 13, 2014, the agency received a PA request requesting speech and language therapy services for the Petitioner.
3. On April 11, 2014, the agency denied the PA request. The notice informed the Petitioner of the right to appeal the denial if an appeal was filed with the Division of Hearings and Appeals on or before May 26, 2014.
4. On August 1, 2014, an appeal was filed on behalf of the Petitioner.

DISCUSSION

A hearing officer can only rule on the merits of a case if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by an agency concerning Medicaid must be filed within 45 days of the date of the action. The Petitioner's appeal was filed 112 days after the date of the action. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case.

I note that the Petitioner was not asked about the timeliness issue at the hearing. If there is evidence that the denial was not properly received or there is other sufficient good cause for not filing the appeal within the deadline noted in the April 11, 2014 notice, the Petitioner may request a rehearing in accordance with the instructions at the end of this decision with evidence demonstrating good cause for the late filing.

I further note that this decision does not preclude the Petitioner from re-submitting a PA request for consideration by the agency.

CONCLUSIONS OF LAW

The Petitioner's appeal is not timely.

THEREFORE, it is

ORDERED

That the Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

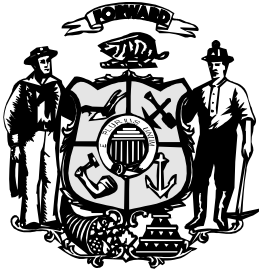
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 14th day of October, 2014

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
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5005 University Avenue
Madison, WI 53705-5400

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Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on October 14, 2014.

Division of Health Care Access and Accountability